7. Mortgages (§ 292 (2)*)—Assumption of Mortgage Notes by Purchaser—Liability.—Under Code 1849, c. 116, § 2, providing that if a covenant or promise be made for the sole benefit of a third person, such person may maintain in his own name any action thereon, and independently of the statute, where defendant, as part of the consideration for his purchase of realty from the mortgagor thereof, agreed by parol to pay the mortgag notes, the mortgagee cannot sue at law on the promise to recover the deficiency between the amount of the notes and the money realized by sale of realty.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 67.]

8. Mortgages (§ 283 (1)*)—Sale by Mortgagor—Assumption of Debt—Relations of Mortgagor and Mortgagee.—No agreement between the mortgagor and his grantee that the latter shall assume the mortgage debt can change the relations of the mortgagor and mortgagee and require the latter to treat the mortgagor as a mere surety, without the assent of the mortgagee, but when the assent of the mortgagee has been given, equity, by a quasi subrogation, and to avoid a multiplicity of suits, gives to the mortgagee the benefit of all the collateral obligations for the payment of the debt which the surety or mortgagor holds for his indemnity.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 65, 67.]

9. Dismissal and Nonsuit (§ 73*)—Motion to Dismiss for Want of Jurisdiction—Matters Affecting Merits.—On motion to dismiss for want of jurisdiction of the subject-matter, matters affecting the merits of the case cannot be considered.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 683.]

Error to Circuit Court of City of Norfolk.

Proceeding by motion for judgment for money by Hubard & Appleby, Incorporated, against Thacker. To review a judgment for plaintiff, defendant brings error. Judgment reversed, without prejudice to plaintiff in equity.

Burrow & Spindle and *Jas. E. Heath,* all of Norfolk, for plaintiff in error.

Jas. G. Martin, of Norfolk, for defendant in error.

BUILDERS' SUPPLY CO. OF HOPEWELL, Inc. *v.* PIEDMONT LUMBER CO., Inc.

SAME *v.* PEERLESS LUMBER CO., Inc.

Jan. 24, 1918.

[94 S. E. 938.]

1. Courts (§ 12 (1)*)—Jurisdiction—Place of Business of Corporation.—Where a certificate of incorporation stated that the principal

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

office of the corporation was to be located at Hopewell, Prince George county, Hopewell being an unincorporated community, if the company's place of business as established by it was within the territory subsequently severed from the county and incorporated as the city of Hopewell, such severance carried with it such principal office, and the corporation court of Hopewell had jurisdiction of an action against such corporation.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 605.]

2. Pleading (§ 111*)—Pleas in Abatement and to Jurisdiction—Burden of Proof.—Upon a plea to the jurisdiction or in abatement, the burden of proof as a general rule is on defendant, as in the case of other affirmative pleas.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 343, 344.]

3. Courts (§ 6*)—Jurisdiction—Place of Accrual of Cause of Action.—The corporation court of a city has jurisdiction of actions against a corporation whose principal office is within the corporate limits of the city without reference to where the causes of action arose.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 605, 609.]

4. Courts (§ 189 (4)*)—Corporation Courts—Service of Process—Return.—Chapter 1, § 14, of the Act Concerning Corporations (Acts 1902-04, c. 442 [Code 1904, § 1105a, subd. 14] as amended by Acts 1910, c. 35) requires every corporation of a specified class whose officers and directors are nonresidents of the city or county where its principal office is located, to appoint an attorney in fact residing in such city or county upon whom all legal process may be served, and provides that, if the company fails to appoint such attorney, all legal process may be served upon the clerk of the court. Held that, in an action in a corporation court against a corporation, a return of service on the clerk of the court was defective where it merely recited that the officers and directors of the corporation were not residents of the city or county, and that no person had been designated upon whom service of process might be made, and did not show that the principal office of the corporation was in such city, since, where constructive service of process is allowed, the terms of the statute by which it is authorized and prescribed must be strictly followed, or the service will be invalid.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 240; 1 Va. Law Reg. 655 and note.]

5. Courts (§ 189 (4)*)—Corporation Courts—Service of Process—Amendment of Return.—Though judgment was rendered and proceedings in error taken, it was not too late to amend the return to show the jurisdictional fact.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 356.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Corporation Court of Hopewell.

Actions by the Piedmont Lumber Company, Incorporated, and the Peerless Lumber Company, Incorporated, against the Builders' Supply Company of Hopewell, Incorporated. Judgments for plaintiffs, and defendant brings error. Remanded for further proceedings.

Flaherty & Zeleznik, of Hopewell, for plaintiff in error.

Lightfoot & Tucker, of Hopewell, for defendants in error.

GREEN *v.* COMMONWEALTH.

Jan. 24, 1918.

[94 S. E. 940.]

1. **Criminal Law (§ 240*)—Infants—Holding for Grand Jury.**—A judgment of a justice that "the accused * * * brought before us, and cases examined and sent to the grand jury," was equivalent to ascertainment that offense was aggravated, or that ends of justice demanded investigation by the grand jury of an offense of a minor under 18, and required the circuit court to put the accused on trial, under Acts 1914, c. 350, § 2, providing that no court or justice, unless the offense is aggravated, or the ends of justice demand otherwise, shall sentence or commit a child under 18 years of age charged with or proven to have been guilty of any crime to a jail, workhouse, or police station, or send such child to the grand jury, nor sentence such child to the penitentiary.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 2, 3.]

2. **Homicide (§ 135 (1)*)—Indictment—Shooting—Kind of Bullets.**—An allegation in an indictment that the killing was done with a loaded shotgun was sufficient, and it is immaterial that there was uncertainty as to the nature of shot or bullets used, under Code 1904, §§ 3998, 3999, providing that all allegations unnecessary to be proved may be omitted, and that omissions of any particular kind of force and arms, or the omission or insertion of any other words of mere form or surplusage, will not vitiate an indictment.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 130.]

3. **Homicide (§ 135 (1)*)—Indictment—Certainty—"Shot"—"Bullets."**—Allegations in murder indictment that killing was by shotgun loaded with "shots or bullets" is not bad for uncertainty, the words being used synonymously; "shot" being defined as a projectile, particularly a solid ball or bullet that is not intended to fit the bore of a piece, also such projectiles collectively.

[Ed. Note.—For other definitions, see Words and Phrases, Second Series, Shot. For other cases, see 7 Va.-W. Va. Enc. Dig. 130.]

4. **Jury (§ 70 (4)*)—Venire Facias—Form and Sufficiency.**—That

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.